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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JOHN MONTUE,

11 Petitioner,

No. CIV S-05-0935 LKK JFM P

12 vs.

13 TERESA A. SCHWARTZ, et al.,

14 Respondents.

ORDER

15 \_\_\_\_\_/  
16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of  
17 this court's August 11, 2005 dismissal of his application for a writ of habeas corpus for failure to  
18 obtain authorization from the United States Court of Appeals for the Ninth Circuit to proceed  
19 with a second or successive habeas corpus petition. See 28 U.S.C. § 2244(b)(3). Petitioner has  
20 also requested an extension of time to file a request for a certificate of appealability pursuant to  
21 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b).

22 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the  
23 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.  
24 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues  
25 satisfy the required showing or must state the reasons why such a certificate should not issue.  
26 Fed. R. App. P. 22(b).

After careful review of the entire record herein, this court finds that petitioner has not satisfied the first requirement for issuance of a certificate of appealability in this case. Specifically, there is no showing that jurists of reason would find it debatable whether petitioner was required to, and did not, first obtain authorization from the court of appeals to proceed with this second or successive habeas corpus application. Accordingly, a certificate of appealability should not issue in this action.

1. A certificate of appealability should not issue in this action;

2. Petitioner's August 29, 2005 request for an extension of time is denied as unnecessary; and

3. The Clerk of the Court is directed to process petitioner's appeal to the United States Court of Appeals for the Ninth Circuit.

DATED: September 12, 2005.

/s/Lawrence K. Karlton  
UNITED STATES DISTRICT JUDGE

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